**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.**

**JUDGMENT**

**Pyara @ Pyare lal vs. The State of Rajasthan.**

**D.B.Cri. Jail Appeal No.357/2002**

Under Section 374 (2) Cr.P.C. against the judgment dated 14.02.02 passed by the Addl. Sessions Judge No.2, Udaipur in Sessions Case No.42/2001.

.....

**Date of Judgment: 22nd August, 2007.**

**PRESENT**

**HON'BLE MR.JUSTICE BHAGWATI PRASAD**
**HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI**

Mr. Jitendra Singh Khichi, amicus curiae, for the appellant.
Mr.JPS.Choudhary, Public Prosecutor.

**BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-**

The present appeal is filed by the accused appellant against the decision of the Addl. Sessions Judge No.2, Udaipur, in Sessions Case No.42/2001 dated 14.02.02.

The prosecution was initiated on the basis of a first

information report being report No.36/2001 at Police Station Sarada. Ex.P/2 was drawn on the basis of a written report filed by Naru as Ex.P/1. According to this first information report, it was stated that Daya has died due to injuries on his neck and mouth by axe. It was stated in the report that Daya slept in the 'Bhagal' in the night and somebody has killed him during the night. The name of the accused is not indicated in the first information report.

On the basis of such report, investigation was conducted. The accused was arrested and charge- sheeted in the committal court under Section 302 IPC. After commitment, the case was made over to the trial court for trial. The trial court framed the charge under Section 302 IPC, which was denied by the accused and he claimed trial.

At the trial, prosecution examined 8 witnesses and 21 documents were got exhibited. After the trial , the trial court found that there is no direct evidence available, but the case is based on circumstantial evidence. The circumstances which have been pressed into service by the learned trial court are that the clothes of the accused have been found to be blood stained of human origin . The axe recovered at his instance have also found to be blood stained of

human origin. Blood group of 'O' origin was found on the pant and shirt and the axe. Thus, in the opinion of the trial court , the accused was guilty of murdering the deceased. Apart from the blood stained clothes and blood stained 'kulari' and a kind of suggestion of the strained relation in between the accused and the deceased , who were real brothers, there was no other circumstance available on record.

The learned counsel for the accused appellant urged that the blood found on the cloth and the axe could only be used as corroborative piece of evidence, if some other kind of evidence Aluendie, is available on record. There is a complete lack of supporting evidence being available on record. There is an attempt on the part of the prosecution to base its case on the statement made before the police but the same has been alleged to have been made before the police and, therefore, it was not considered by the trial court of any worth because any extra judicial confession made before the police is inadmissible. The learned counsel for the accused has further stressed that the circumstances which are pressed against the accused are not only inconclusive but are insufficient evidence to create a doubt against the accused . In that view of the matter, the findings of the trial court are not liable to be sustained.

Per contra, the learned counsel for the State submitted

that the trial court has taken note of the fact that there was strained relations in between the two brothers. The deceased was a parasite for which the accused had earlier thrashed him for not earning and for this, in the night he had eliminated him . The finding of the trial court, therefore, cannot be found fault with.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the material available on record.

The judgment turns out of circumstances. There is no direct evidence available . There are basically two circumstances , one is strained relationship between the deceased and the accused and the other is blood on the axe and the clothes of the deceased. In our opinion, these two circumstances could at best be used as corroborative piece of evidence , if any other circumstances could be used against the accused person. But unfortunately, no effort has been made by the investigating agency to collect such evidence which could be used to support the case made out against the accused person. The circumstances i.e. blood stained clothes and axe, in its nature would not be sufficient to complete the chain of circumstances establishing that the accused was guilty of the offence, as alleged. That being the position, the accused deserves to be

granted benefit of doubt.

In the result, we find that the prosecution has failed to establish its case. There is no chain of circumstances available on record to sustain the findings of conviction , as recorded by the trial court. Resultantly, the appeal is accepted. The charge under section 302 IPC is not made out against the accused appellant Pyara @ Pyare Lal and, therefore, he is acquitted of this charge and resultantly, his sentence is also set aside. He is behind the bars, he should be released forthwith, if not required in any other case.

**(MUNISHWAR NATH BHANDARI), J.** **(BHAGWATI PRASAD), J.**

L.George